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NOTES.

THE INCORPORATION OF TRADE UNIONS—THE POSITION IN ENGLAND.

AT a time when the incorporation of trade unions is attracting attention the advance recently made in this direction in England is worthy of note. The acts of 1871 and 1876 are the Magna Charta of English trade unionism. They legalize the unions and provide that they shall not be subject to criminal proceedings. They enable unions to register, to hold property by means of trustees who can sue or be sued. They require a registered union to have a registered office and inflict on a union which fails in this respect and on every officer thereof a penalty. They provide that unions may withdraw their certificate of registration "but without prejudice to any liability incurred," or that they may amalgamate, "but no amalgamation shall prejudice any right of a creditor of either."

These are provisions in the act of 1871, or in the amending act of 1876—but there is no explicit statement made as to incorporation. But, whether the legislature intended or not that a trade union should be able to sue or be sued, the fact now stands that the five judges of the Supreme Court of Appeal, the House of Lords, unanimously decided in the Taff-Vale case, July 22, 1901, that the legislature did so intend and today in England a trade union can sue or be sued.

Before considering the effect on trade unionism of this decision it is of interest and some importance to note the attitude taken up by the opposing parties with regard to the fit and proper character of a trade union. The Taff-Vale case, it will be recalled, was an action by the Taff-Vale Railroad Company against the Amalgamated Society of Railroad Servants and against two of its officials. The respondents gave a notice of motion that the name of the society as defendant be struck out as being incapable of suing or being sued. Justice Farwell refused the application. On an appeal the Master of the Rolls in the Court of Appeal reversed the decision of Justice Farwell and declared that a trade union could not sue or be sued. The case was thereon appealed to the House of Lords, where the five judges reversed the decision of the Court of Appeal and restored that of Justice Farwell.

Leaving aside as far as possible the subtle question as to whether the judges interpreted aright the intention of the legislature in the acts of 1871 and 1876, we find Mr. Haldene as counsel for the Union, affirming that the legal position of a trade union was that of a club, and that if a wrong was done by individual members they should be proceeded against as individuals. On the other hand he pointed out that if a trade union were declared capable of suing and being sued the funds intended for the benefit of widows and orphans could be reached and perhaps exhausted in consequence of improper and illegal acts of the society's officers. It may be added, without any injustice to the trade unionists, that the view of a trade union as a club seemed to them not merely legal but just.

On the other side it was argued that it was contrary to the spirit of the laws and the constitution that an organized and powerful association should not be held responsible for the results of its policy. It was claimed that mere prosecution of individuals was in the case of masses of men impossible, that in order to make justice efficient the association must itself be capable of suing and of being sued, and that a trade union if not in law strictly a corporation must be held to possess the essential characteristics of a corporation. And, it was argued, just, as a corporation is answerable for the wrong act of a servant or agent committed in the course of service and for the master's benefit, though no express command or privity of the master be proved, so a trade union must beheld responsible for the acts done by its agents. The judges of the House of Lords considered that the acts of 1871 and 1876 presented nothing inconsonant with these principles, and, that being so, decided that a trade union could sue or be sued.

Coming to the question of the effects of this weighty judgment, it is worth noting the comment of Mr. Webb in the 1902 edition of *Industrial Democracy* (p. xxvi) :

At first sight there would seem little or nothing to complain about. The judgment professes to make no change in the lawfulness of Trade Unionism. No act is ostensibly made wrongful which was not wrongful before. And if a Trade Union, directly or by its agents, causes injury or damage to other persons, it seems not inequitable that the Trade Union itself should be made liable for what it has done. The real grievance of the Trade Unions, and the serious danger to their continued usefulness and improvement, lies in the uncertainty of the English law and its liability to be used as a means of oppression. This danger is increased and the grievance aggravated by the dislike of Trade Unionism and strikes which nearly all judges and juries share with the rest of the upper middle classes.

Mr. Webb dwells on the growing aversion of the propertied and professional classes toward trade-unionism. He points out that there is a growing uneasiness as to the action of trade unions; that it is felt that under competitive conditions to paralyze a department of industry is akin to social crime; that there is an increasing public sentiment in favor of some authoritative tribunal of conciliation or arbitration. Further to quote again Mr. Webb's words:

A clear majority of our judges evidently believe, quite honestly, that Trade Unionism—meaning the enforcement of Common Rules on a whole trade—is anomalous, objectionable, detrimental to English industry, and even a wicked infringement of individual liberty, which Parliament has been foolishly persuaded to take out of the category of crimes. Their lack of economic training, and their ignorance of economic science is responsible for this state of mind.

Mr. Webb's remarks we have quoted freely from, not only because they point to serious dangers, but because they seem to us to go far toward justifying economically, if not legally, the Taff-Vale decision. For if there is one thing which they specially bear witness to, it is the general feeling that the trade union is not sufficiently within the reach of the law. There is no doubt in England a wide-spread sentiment—sometimes justified, often not, that trade unions have had unprogressive and even immoral ideas of work. But as powerful in this dull antipathetic growth of feeling is the sense that the trade union is not a properly responsible body—not properly amenable to justice. Further, public opinion as regards trade unionism has become differentiated. We are inclined to believe that so far from being less favorable than formerly the intelligent public today, outside the trade unions, is more favorable to them. Mr. Webb has done no little toward creating this condition of affairs. But on the other hand the intelligent public in England is more conscious of the abuses to which trade-unionism may give rise, and it wishes to see the interests of the community safeguarded. Labor association, it is felt, is no longer in its tender years. It is strong, and a thing not to be broken. It has reached independence and equality, and now it must show itself, or be made, fully conscious of the force of the law. The divine rights of trade unions have no more justification than the divine rights of any other earthly sovereigns. But all this is not an attack on the real function of the trade union. It is the discernment of what are the proper conditions or limitations of its power. The Taff-Vale decision goes far to remedy the alienation of public opinion as regards trade-unionism. If it does not satisfactorily interpret the law, it expounds what the plain man

feels to be justice. In making unionism responsible it guarantees the sanctity of contract. It brings a great organized force which represents not merely strength but purpose under the control of the law. And in so doing it will enable the trade union better to perform its proper function. As regards the danger from the conservatism and technical propensities of the judiciary, while one admits in view of recent decisions, the danger to which Mr. Webb refers, one finds none the less among the judges strong economic insight. For example the judgments of Lord Lindley — one of the judges in the Taff-Vale case — are remarkable for this quality. Meantime, the position of the trade union — what it can, and what it cannot do — will get clearly defined. There is no serious fear of the just rights of labor associations being defeated, and any process, though for the time being somewhat costly, which will lead to a general understanding of what is just and lawful is worth undergoing. Externally — in the relation which the public bears to it — the trade union, it is our opinion, gains in true strength by the Taff-Vale decision. Internally, — as regards the cohesion and efficiency of the union itself, the decision will have, we believe, no less favorable an effect. As Mr. Webb remarks, "Even when a strike is lawful Trade-Union officials will now have to be careful how they call the men out." It will make the action not only of trade-union officials but of men who are nothing more than members, circumspect. The irresponsible member is a feature which should belong to no society. And as the fact of responsibility is brought home to every individual it will give greater cohesion and strength rather than weakness to the union. So far as one can ascertain, the American unions seem to hold proportionately far smaller reserve funds than the English unions. Incorporation, it is agreed, would endanger their slender funds, but the sooner a union learns that it must have a reserve the sooner it will be strong, and also the sooner it will show the spirit of responsibility. The unions have almost everything in the long run to gain from incorporation. There is, indeed, a great danger if the judiciary is not above suspicion, but the sooner this comes seriously to the public test, the sooner the evil, if it exists, will be mended. The unions are now great organized forces embodying a conscious policy able to hinder or to help more than any other force the economic welfare of the community, and, that being the case, the sooner they assume responsibility formally and legally the greater will be the support from without and their efficiency from within.

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